

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY G. WILLS,

No. C 05-02690 CW (PR)

Petitioner,

ORDER GRANTING AN EXTENSION OF  
TIME TO APPEAL AND DIRECTING  
CLERK OF THE COURT TO PROCESS  
NOTICE OF APPEAL

v.

BEN CURRY, Warden,

Respondent.

On September 3, 2008, Petitioner filed a notice of appeal following this Court's July 15, 2008 Order denying his habeas petition challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings (Board).<sup>1</sup> Petitioner has also filed a document entitled, "Motion for Relief from Default" (docket no. 19), which the Court will construe as a request for the Court to extend the time for appeal until September 3, 2008, based on excusable neglect.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal "be filed with the clerk of the district court within 30 days after the entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1). Relief from the deadline for a timely notice of appeal may be obtained by a motion in the district court under Rule 4(a)(5), which allows for an extension of time if the party requests it within thirty days of the expiration of the time to file the notice and shows excusable neglect or good cause. See Fed. R. App. P. 4(a)(5).

<sup>1</sup> The Board of Prison Terms was abolished effective July 1, 2005, and replaced with the Board of Parole Hearings. Cal. Penal Code § 5075(a).

1       Petitioner filed his request for the Court to extend the time  
2 for appeal within thirty days of the expiration of the time to file  
3 his notice of appeal (August 15, 2008), and he shows excusable  
4 neglect. Accordingly, the Court grants Petitioner's request.  
5 Therefore, Petitioner's Notice of Appeal filed on September 3, 2008  
6 is timely filed.

7       The Ninth Circuit has made clear that a state prisoner  
8 challenging the administrative decision by the Board to deny his  
9 request for parole need not obtain a certificate of appealability.  
10 See Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005).

11       The Clerk of the Court shall process the notice of appeal.

12       IT IS SO ORDERED.



13 DATED: 9/18/08

14       \_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

WILLS,

Plaintiff,

v.

KANE et al,

Defendant.

Case Number: CV05-02690 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 18, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jerry G. Wills  
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Dated: September 18, 2008

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California